

Decision 09-07-042 July 30, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Utility Consumers' Action Network (UCAN),

Complainant,

vs.

MPower Communications Corp. dba TelePacific  
Communications fka MPower Communications  
aka TelePacific Holding Corp. and related entities  
collectively "TelePacific," U5859C,

Defendant.

Case 08-08-008  
(Filed August 12, 2008)

**ORDER EXTENDING STATUTORY DEADLINE**

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as this complaint case shall be resolved within 12 months after they are initiated, unless the Commission makes findings why that deadline cannot be met and issues an order extending the 12-month deadline. In this proceeding, the 12-month deadline for resolving the case is August 12, 2009. As explained below, the parties agreed at a prehearing conference (PHC) held in December 2008 that they thought this case could be resolved on a stipulated set of facts. In keeping with this view, the parties filed a joint fact stipulation on January 15, 2009, as well as opening and reply briefs on January 29 and February 11, 2009, respectively.

Although the assigned Administrative Law Judge (ALJ) has been begun work on a Presiding Officer's Decision (POD), his progress has been slowed by the need to work on other matters, as well as the complex legal issues that this

case raises. These issues have necessitated an examination of federal as well as California law, in addition to a review of industry literature. As a result of all these factors, it has not been possible for the assigned ALJ to prepare a POD in time to be considered at the July 30, 2009 business meeting, the Commission's last meeting before expiration of the 12-month deadline. In order to allow additional time for a POD to be drafted, we have decided, pursuant to our powers under Pub. Util. Code § 1701.2(d), to extend the deadline for resolving this proceeding through and including February 12, 2010.

### **1. Background**

The complaint herein was filed in mid-August 2008. It alleged that defendant Mpower Communications Corp. (Mpower)<sup>1</sup> had imposed unauthorized direct dialing charges on customers, failed to provide notice that international calls could be placed on the customers' accounts, and billed at unpublished rates that were significantly higher than Mpower's published rates. According to the complaint, these alleged acts constituted violations of §§ 451, 2890 and 2896 of the Public Utilities Code.

The dispute here arises out of international calls that were placed from a telephone line used for facsimile service by the Edelweiss Flower Salon (Edelweiss) in San Diego, California. Originally a partnership, Edelweiss is now solely owned by Natalja Stepanova. According to the complaint, Edelweiss's

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<sup>1</sup> The answer was filed on behalf of Mpower and its corporate parent, U.S. TelePacific Holdings Corp.

owners originally contracted with Mpower for a business telephone package that consisted of the fax line, a DSL line and three POTS lines.<sup>2</sup>

Edelweiss's troubles with Mpower began in September 2006, when Ms. Stepanova received a bill for the fax line totaling \$1,043.13 (before taxes, fees and surcharges), most of which was attributable to 17 allegedly unauthorized international calls made through expensive satellite facilities. An even larger bill for such calls was issued by Mpower for October 2006.

Ms. Stepanova declined to pay the bills and instead asked Mpower's customer service representatives to remove the disputed charges. When the charges were not removed, Stepanova hired an attorney. Although the attorney thought he had reached an understanding with Mpower that Edelweiss's service would not be interrupted if it paid the undisputed amounts relating to the fax line, Mpower disconnected the service on all of Edelweiss's lines on November 28, 2006, after Ms. Stepanova refused Mpower's demand that the full amount of the disputed bills be paid immediately. On December 20, 2006, Mpower also billed Stepanova approximately \$1,350 in early termination fees as a result of her decision to cancel her contract with Mpower.

In their answer to the complaint, Mpower and its corporate parent allege that although it cannot be determined with certainty, the international satellite calls that Ms. Stepanova says were unauthorized apparently took place as a result of someone's gaining access to Edelweiss's fax line by hacking into the device's modem. Mpower also alleges that its June 2005 contract with Edelweiss expressly requires the customer to secure its equipment against such

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<sup>2</sup> POTS stands for "Plain Old Telephone Service."

unauthorized access, but that Stepanova apparently failed to do so. Mpower also alleges that the disputed calls were billed at \$14.67 per minute, the lawful rate set forth on its website for Global Mobile Satellite System (GMSS) calls.<sup>3</sup>

Finally, Mpower alleges that neither Pub. Util. Code § 2890 nor General Order (GO) 168 preclude the collection actions it took, because (1) the charges in dispute are for direct-dialed service, which under § 2890 and GO 168 is “prima facie evidence of authorization,” and (2) Mpower has verified through its investigation that the charges were authorized under the terms of Edelweiss’s service agreement.

Owing to Commission scheduling constraints, the PHC in this case was not held until December 3, 2008. As noted above, both parties at the PHC took the position that the case could be resolved without hearings, since both of them thought they could agree on a joint stipulation of facts. The ALJ provisionally agreed to this approach, and January 14, 2009 was set as the date for filing the joint stipulation (or a statement that the parties had been unable to agree on one).<sup>4</sup> January 28 and February 11, 2009 were also set as the filing dates for opening and reply briefs, respectively.

The parties adhered to the agreed-upon schedule, and on April 8, 2008, a scoping memo was issued confirming the procedural arrangements set forth above.

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<sup>3</sup> According to its answer, Mpower’s publication of its GMSS rates on the company’s website satisfies the applicable rules of the Federal Communications Commission (FCC).

<sup>4</sup> Pursuant to a joint e-mail request from the parties, the due date for the stipulation was extended for one day, until January 15, 2009.

## **2. Discussion**

As the foregoing summary suggests, this case raises some complex legal issues. The parties' briefs debate not only the effects of several California statutes and California caselaw, but also the import of a number of cases decided by the FCC.

Before the assigned ALJ could turn to the issues in this case, however, he was required to work on a number of other matters. The ALJ spent most of February, the month in which the parties' reply briefs were filed, working on a lengthy ruling in Case (C.) 08-02-013. In March, he continued working on C.08-02-013, and also began work on a decision approving a settlement in Application (A.) 07-04-022. Work on this settlement decision also consumed most of April. In May 2009, the ALJ had to work on another lengthy ruling in C.08-02-013, as well as do background work in another matter. It was not until June that he was able to devote most of his time to this case.

Based on all of these circumstances, it is clear that the 12-month deadline for this case needs to be extended. Although we expect that a POD will be circulated within the next several months, we have decided, pursuant to our powers under Pub. Util. Code § 1701.2(d), to extend the deadline for resolving this proceeding until February 12, 2010.

### **Findings of Fact**

1. The complaint in this case was filed on August 12, 2008.
2. Because of Commission scheduling constraints, a PHC in this matter was not held until December 3, 2008.
3. The last round of pleadings that the parties agreed to submit at the PHC was filed on February 11, 2009.

4. Because of the urgency of certain issues in C.08-02-013, the need for prompt approval of the settlement agreement in A.07-04-022, and other matters, the ALJ was not able to turn his attention to drafting a POD in this case until June 2009.

5. An extension of time until August 12, 2010 should allow the ALJ adequate time to finish drafting the POD, and give the losing party or any concerned Commissioner time to decide whether to file an appeal of the POD (or request review thereof) pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure.

### **Conclusions of Law**

1. Because of the urgency of the issues in C.08-02-013 and A.07-04-022, as well as other matters, it will not be possible to resolve this case within the 12-month period provided for in Pub. Util. Code § 1701.2(d).

2. The 12-month statutory deadline should be extended for six months to allow for resolution of this proceeding.

**IT IS ORDERED** that that the 12-month statutory deadline in this proceeding, August 12, 2009, is extended to and including February 12, 2010.

This order is effective today.

Dated July 30, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

